

I assent.

(L.S.)

**MARIE-LOUISE  
COLEIRO PRECA  
President**

9th September, 2016

**ACT No. XLVIII of 2016**

*AN ACT to encourage the regulation of family businesses, their governance and the transfer of the family business from one generation to the next; to encourage and assist family businesses to enhance their internal organisation and structure with the aim of effectively operating the business and working towards a successful succession of the family business; and for other matters consequential or ancillary thereto.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

ARRANGEMENT OF THE ACT

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**Part I**  
Preliminary

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Short title and commencement.

**1.** (1) The short title of this Act is the Family Business Act, 2016.

(2) This Act shall come into force on such date as the Minister may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

Interpretation.

**2.** In this Act, and in any rules or regulations made under this Act, unless the subject or context otherwise requires:

"applicant" means a business registering as a family business under this Act;

Cap. 364.

Cap. 463.  
Cap. 325.

"benefits" means any assistance or relief granted to a registered family business in terms of the Duty and Documents Transfers Act, Malta Enterprise Act, Business Promotion Act and in terms of any other law or scheme as the Minister may prescribe by regulations;

"established in Malta" means the head office, agency, or branch or part of a business and shall include a permanent presence of that business carried out in Malta;

"family business" has the meaning assigned to it in article 3;

"family member" means the family business owner's spouse, ascendants, descendants in the direct line and their relative spouses, brothers or sisters and their descendants or as the Minister may prescribe;

"guidelines" means the set of rules issued by the Regulator from time to time for the further implementation of the provisions of this Act, and any regulations made hereunder, including the definition, application, administration, grant and revocation of benefits, schemes and other arrangements for the regulation, management and transfer of family businesses and their governance in Malta;

Cap. 386.

"limited liability company" means a company duly formed and registered under Part V of the Companies Act;

"the Minister" means the Minister responsible for the economy;

"owner" means the ultimate beneficiary, natural person who, directly or indirectly, has a shareholding or other interest in a family business;

Cap. 386.

"partnership" means a partnership *en nom collectif* or partnership *en nom commandite* duly formed and registered in terms of Part III and Part V of the Companies Act;

"prescribed" means either prescribed by regulations made by the Minister under this Act or prescribed by binding guidelines made by the Regulator under this Act, unless otherwise expressly stated, and in the event of a conflict between the regulations made by the Minister and guidelines made by the Regulator on any particular matter, the regulations shall prevail;

"private foundations" means those foundations established for a private interest and registered or otherwise recognised as legal persons in terms of the Second Schedule to the Civil Code; Cap. 16.

"public limited company" means a company duly formed and registered under Part V of the Companies Act; Cap. 386.

"the Regulator" means a person who is appointed to manage, supervise and administer the Register of Family Businesses according to this Act and appointed by virtue of article 17;

"spouse" means a spouse in terms of the Marriage Act and a partner in terms of the Civil Unions Act; Cap. 255.  
Cap. 530.

"trusts" means a trust in terms of the Trusts and Trustees Act. Cap. 331.

## Part II

### General Provisions

**3. (1)** A family business that can qualify for registration under this Act shall mean any business established in Malta whereby: Conditions for registration as a family business.

(a) in the case of a public limited liability company whose shares are listed on a regulated market or traded on a multilateral trading facility, the majority of the shares including the rights are held, whether directly or indirectly, by at least two owners who are family members within the same family; Listed companies.

(b) in the case of a limited liability company constituted in a manner other than that referred to in paragraph (a): Limited liability companies.

(i) all the shares of the company are held, directly or indirectly, by at least two owners who are family members within the same family; and

(ii) at least one family member is formally involved in the general governance, its proper administration and management of the company:

Provided that shares held directly or indirectly by individuals who are not family members shall be disregarded for the purposes of this paragraph if their aggregate issued value

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does not exceed five per cent of the issued share capital of the company:

Provided further that shares held directly or indirectly by employees who have been in continuous, full-time employment within the family business for over three years and who are not family members shall be disregarded for the purposes of this paragraph if their aggregate issued value does not exceed ten percent of the issued share capital of the company:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement;

Registered partnerships.

(c) in the case of partnerships *en nom collectif* and partnerships *en commandite*:

(i) the full capital contribution to the partnership shall have been made, directly or indirectly, by at least two owners who are family members within the same family having, directly or indirectly, the right to receive the majority of distributable profits; and

(ii) at least one of whom holds the majority of the decision making rights:

Provided that capital contributions made, directly or indirectly, by persons who are not family members shall be disregarded for the purposes of this paragraph if their aggregate contribution does not exceed five per cent of the total contribution made by all partners in the partnership:

Provided further that capital contribution made, directly or indirectly, by employees who have been in continuous full-time employment within the family business for over three years and who are not family members shall be disregarded for the purposes of this paragraph if their aggregate contribution does not exceed ten percent of the capital contribution of the partnership:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement;

Trusts.

(d) in the case of a family business where all the shares or the interest are being held by a trustee under trust for the benefit of members of a family as beneficiaries, and which has

been established by a written instrument and all the beneficiaries are owners and family members within the same family:

Provided that other beneficiaries who are not family members within the same family business trust shall be disregarded for the purposes of this paragraph if they do not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing family members within the same family capable of benefiting from the trust at any relevant point in time:

Provided further that other beneficiaries who are employees who have been in continuous full-time employment within the same family business trust for over three years and who are not family members within the same family shall be disregarded for the purposes of this paragraph if they do not in aggregate benefit from more than ten per cent of the family business trust, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing family members within the same family capable of benefiting from the trust at any relevant point in time:

Provided further that where any business assets are held on lease by the trustee, the trustee is the majority of the lessees in the lease agreement;

(e) in the case of a business carried out by family members in a form of partnership other than as indicated in paragraph (c), the business and the assets of such business are owned and controlled, directly or indirectly, by at least two owners who are family members within the same family:

Other registered forms of a family business.

Provided that other assets held by individuals who are not family members shall be disregarded for the purposes of this paragraph if their aggregate value does not exceed five per cent of the net assets of the family business:

Provided further that other assets held by employees who have been in continuous full-time employment within the family business for over three years and who are not family members shall be disregarded for the purposes of this paragraph if their aggregate value does not exceed ten per cent of the net assets of the family business:

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Cap. 16.

Provided further that such a business shall abide by all the provisions relative to unregistered organisations as provided in the Civil Code, and the relative Schedule thereto:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement; and

Other business.

(f) any other business as the Minister may prescribe.

Indirect acquisition of a family business.

(2) For the purposes of this article, a reference to shares, interests or other assets, held indirectly by family members in the business or contributions made to the business indirectly by family members refers to those shares, interests or other assets held or contributions made by:

(a) holding companies which are at least 85%, as the case may be, beneficially owned by family members; or

(b) trustees of a trust set up for the benefit of family members within the same family provided that other beneficiaries who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing beneficiaries capable of benefiting from the trust at any relevant point in time:

Provided that other beneficiaries who are employees who have been in continuous full-time employment within the family business trust for over three years and who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than ten per cent of the family business, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing family members within the same family capable of benefiting from the trust at any relevant point in time; or

(c) private foundations that are set up for the benefit of family members within the same family provided that other beneficiaries who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the private foundation's assets only upon

termination of the private foundation due to the fact that there are no existing beneficiaries capable of benefiting from the foundation at any relevant point in time:

Provided that other beneficiaries who are employees who have been in continuous full-time employment within the family business for over three years and who are not family members within the same private foundation shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than ten per cent of the private foundation, or if they are only residual beneficiaries who will benefit from the private foundation only upon termination of the private foundation due to the fact that there are no existing family members within the same family capable of benefiting from the private foundation at any relevant point in time:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

**4.** (1) For the purposes of this Act, shares or share capital of a company shall mean: Ownership of family business.

- (a) the issued share capital of a company;
- (b) the shares allow for rights to dividends;
- (c) the shares shall be voting shares; and
- (d) the shares shall allow for right to assets and profits upon winding up.

(2) For the purposes of this Act, all other shares shall be disregarded.

**5.** (1) An owner who is also a family member shall not have in ownership or the beneficial interest: Apportionment of ownership.

- (a) in the case of a company, own, whether directly or indirectly, more than eighty per cent (80%) of the issued share capital of the family business; or
- (b) in the case of a partnership *en nom collectif* or *en commandite* contribute, whether directly or indirectly, more than eighty per cent (80%) to the partnership's assets; or
- (c) in the case of a trust be in a position where he may benefit from more than eighty per cent (80%) of the trust

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property; or

(d) in the case of a business carried out in partnership in any other form, own, whether directly or indirectly, more than eighty per cent (80%) of the business assets; or

(e) in the case of indirect ownership, own more than eighty per cent (80%) of the shares, interests, other assets or contributions of the business.

(2) The percentage of eighty per cent (80%) shall be that percentage that remains after deducting the percentage of five per cent (5%) from the total contributions not owned by family members and after deducting the ten per cent (10%) of the contributions owned by employees of the business in accordance with the provisos of article 3.

Trusts.

**6.** In the case of a trustee directly or indirectly holding a family business, for the benefit of family members, registration for the purposes of this Act shall be made after the declarations and documents required in the First Schedule are delivered to the Regulator by the duly licensed *pro tempore* trustee of the interests in the family business being held under the trust.

Registered family business.

**7.** (1) A business shall be a registered family business once it has been accepted for registration by the Regulator in terms of article 28.

(2) The family business may, upon a resolution of the holders of shares or other participating rights or interests therein, request the removal of the family business from the Register upon giving three months notice to the Regulator and, in such case, the Regulator shall proceed to cancel the registration subject to the issue of any orders under article 31 which he may consider appropriate.

Identified representative.

**8.** A registered family business shall clearly identify a representative of the family business and make his contact details available to the Regulator upon any change.

Notification of change.

**9.** A registered family business shall notify the Regulator of any change set out in article 3 within ten days from such change.

Disqualification

**10.** A business shall not qualify to be registered as a family business if it has not been actively trading or in operation without interruption for a minimum period of at least three (3) consecutive calendar years.

Objective of benefits.

**11.** (1) The intended objective of the benefits provided under this Act are for the facilitation of the transfer of the registered



family business from the owners who are family members to other family members within the same family.

(2) Transfers made by family members to family members who are ascendants shall not be eligible for any of the benefits.

(3) Upon receiving benefits it shall not be possible for the registered family business or the family member to transfer or assign in whole or in part the benefits of an incentive granted by virtue of this Act, to any other person or business.

(4) When a registered family business intends to apply for any benefits in terms of this Act or any other law, the family business shall obtain the issue of an updated certificate from the Regulator attesting that the family business still qualifies as a registered family business in terms of this Act.

(5) The benefits in terms of the Duty on Documents Transfers Act shall only be granted to a registered family business which has all fiscal returns and contributions duly submitted up to the date of the transfer and the tax due in terms of the Duty on Documents Transfers Act has been paid in full before the transfer takes place. Cap. 364.

**12.** When a registered family business is occupying industrial government premises or land on lease or emphyteusis respectively as prescribed under the Business Promotion Act and subject to the business satisfying all the conditions of the tenancy agreement or emphyteutical deed, the Regulator shall recommend to the Malta Enterprise Corporation and, or Malta Industrial Parks to renew the tenancy, which renewal shall not be unreasonably withheld when the objectives of the renewal are to ensure the continuity of the family business between family members. Industrial premises. Cap. 325.

**13.** (1) A registered family business benefiting from an incentive by virtue of its registration under this Act shall submit the Annual Return found in the Second Schedule to the Regulator by the end of the calendar year. In default there shall be a penalty of twenty-five euro (€25) for each month of delay. In the event of non-compliance for a year, registration shall be duly cancelled and all benefits shall be refunded and reimbursed immediately. Annual Return.

(2) The annual return for a family business shall cover a calendar year from the first day of January to the thirty-first day of December of each year:

Provided that:

(a) if a family business was registered between the first

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day of January and the thirtieth day of September of any year, it shall file the annual return normally but such annual return shall, for the first year only, cover a period of less than twelve months since its registration;

(b) if a family business was registered between the first day of October and the thirty-first day of December of any year, it shall not file an annual return for its first year of registration but it shall file, for the second year only, an annual return up to the thirty-first day of December following the year of registration for a period over twelve months but not exceeding fifteen months.

(3) The annual return and all the required documents relating to a family business shall be filed by not later than the thirtieth day of April of the following year.

Restriction on transfer.

**14.** (1) Any acquisition of immovable property in respect of which a benefit has been claimed pursuant to this Act must remain within the registered family business for a minimum period of three (3) years and in the event that such immovable property is transferred they must be replaced with a similar asset used for the same benefit of the registered family business or such other period as the Regulator may approve.

(2) Any acquisition of shares, interests, contributions or other assets in respect of which a benefit has been claimed pursuant to this Act must remain within the registered family business for a minimum period of three (3) years and in the event that such shares, interests, contributions or other assets are transferred they must be replaced with a similar share, interest, contribution or other asset used for the same benefit of the registered family business or such other period as the Regulator may approve.

(3) The owners of the registered family business must undertake to trade and operate the family business during these three (3) consecutive years without interruption immediately following the granting of the benefits or such other shorter period as the Regulator may approve and in the event that the business ceases to exist in the said period, any benefit claimed shall be refunded and reimbursed.

Decomposition of family business.

**15.** In the event that a registered family business which has availed itself of and claimed any benefits does not remain constituted and registered as a family business for a minimum period of three (3) consecutive years as referred to in article 14, the business shall make a refund of the benefits:

Provided that where a business does not remain constituted

as a family business due to the unexpected death of a family member, in those cases where the business is owned, whether directly or indirectly, by only two family members, the business shall not be required to refund the benefits acquired for the previous transfer of the business:

Provided further that the Regulator shall be informed by the surviving family member within sixty (60) days from the date of the deceased.

**16.** (1) The Minister may by regulations prescribe the proper implementation of the provisions of this Act.

Powers of the Minister to make regulations.

(2) The Minister may also by regulations amend the Schedules to this Act.

### **Part III** The Regulator

**17.** (1) There shall be a Regulator for Family Businesses who shall be appointed by the Minister for the purpose.

Appointment of the Regulator.

(2) The Regulator shall be appointed for a period of three years and may be re-appointed upon expiration of the term of office for a further period or periods:

Provided that during his term as Regulator, such person shall not hold any position which results in a conflict of interest or is incompatible with the correct performance of his official duties as Regulator or with impartiality expected from this office or with public confidence therein.

(3) The Regulator shall receive such remuneration as the Minister may establish.

(4) When the office of the Regulator becomes vacant, a person appointed as Regulator shall hold office temporarily until a successor is appointed. The Minister may, at any time, during the absence of the Regulator or for any other temporary purpose where the Minister considers it necessary to do so, appoint a person to act in the office of the Regulator, until the resumption of office of the Regulator.

(5) The Regulator shall be provided with premises and an adequate number of officials and staff to carry out the functions assigned to him under this Act.

(6) The Minister may also appoint one or more Deputy Regulators to assist the Regulator as directed by him and in the

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performance of his functions:

Provided that the Deputy Regulators, officials and staff appointed to assist the Regulator shall receive such remuneration as the Minister may establish.

Disqualification from appointment of Regulator.

**18.** A person shall not be qualified to be appointed, or to remain, a Regulator if he:

(a) is a presiding judge or magistrate; or

(b) is adjudged bankrupt or has entered into any arrangement with his creditors; or

(c) is interdicted or incapacitated; or

(d) is convicted of an offence affecting public trust, theft, or fraud or of knowingly receiving property obtained by theft or fraud; or

Cap. 386.

(e) is subject to a disqualification under article 320 of the Companies Act; or

(f) is a public officer or becomes a public officer.

Removal from office.

**19.** (1) The Regulator shall only be removed or suspended from office by the Minister on the grounds of proved inability to perform the functions of the office of the Regulator or proved misbehaviour.

(2) The Regulator may, at any time, resign from office by notice in writing to the Minister.

Functions of the Regulator.

**20.** (1) The Regulator shall assess all applicants seeking to register as a family business under this Act and, once registered, ensure their ongoing compliance with the relevant requirements and regulations made hereunder to his satisfaction.

(2) The Regulator shall perform the duties and exercise the functions imposed and conferred on him by this Act and by any regulations made thereunder including:

(a) accepting or refusing applications from businesses to register as family businesses in terms of this Act;

(b) provide registration facilities for businesses which are eligible for enrolment in terms of this Act;

(c) keeping and updating the register of registered

family businesses;

(d) monitoring the activities of registered family businesses in order to ensure that they comply where applicable with the provisions of this Act and or, any regulations and or any guidelines as prescribed;

(e) where eligible, providing the registered family businesses an updated registration certificate attesting that the business still qualifies as a family business in terms of this Act;

(f) providing family businesses with information and guidance about the requirements, benefits and responsibilities in connection with registrations and enrolments in terms of this Act;

(g) making recommendations to the Minister on legislation and policies in support of the family business sector;

(h) assisting government, government departments, public agencies, authorities and entities controlled by the Government in preparing and reviewing policies in support of family businesses;

(i) investigating written grievances in relation to this Act relating to registered family businesses or businesses purporting to be registered family businesses under this Act, and furthermore to investigate *ex officio* any registered family business for any shortcoming and to take such action as is in his power to redress any justified grievance that may come to his notice and including if he deems fit, to refer his findings to the police;

(j) encouraging and promoting the family business sector as well as developing co-operation between family businesses and the Government;

(k) encouraging family businesses to enter into written agreements concerning the principles of governing the family business;

(l) co-ordinating and communicating with any competent authority with a view to facilitating the registration and enrolment processes for family businesses;

(m) performing any other function or duty that is assigned to him by the Minister under this Act and any regulations made thereunder as well as such other functions as

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may be assigned to him under any other law.

(3) In the exercise of his functions, the Regulator shall act impartially and shall not be subject to the direction of any other person or authority.

(4) The Regulator may, by writing under his hand, delegate to any person in the office of the Regulator, specific functions, powers or authorities assigned to or conferred on him by this Act or any other law, and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to divest the Regulator of any of his functions, powers or authorities and he may, if he thinks fit, exercise such functions, powers or authorities collaterally with the person so delegated.

Financial  
Administration  
and Audit Act.  
Cap. 174.

**21.** The provisions of article 72 of the Financial Administration and Audit Act shall not apply to the Regulator or any other person carrying out his functions in terms of this Act.

Information.

**22.** (1) The Regulator may request any information from any government entity, public authority or department in order to fulfil his duties.

(2) Any competent authority shall co-operate with the Regulator as required in the performance of his functions under this Act:

Provided that the Regulator may require the submission of any documentation from any competent authority.

Cap. 377.

(3) A demand under this article may also be sent to a person who is bound by a duty of professional secrecy under the Professional Secrecy Act and for the purposes of article 6A of such Act, the Regulator shall be considered to be a public authority. Any information obtained by the Regulator upon such a demand shall be used exclusively for the purposes of this article.

Guidelines.

**23.** The Regulator may, from time to time, issue guidelines in relation to the activities of registered family businesses and any breach or declaration from these guidelines shall be a consideration for the family business to have their registration certification cancelled.

Cancellation.

**24.** Any registered family business not compliant with any rules and regulations under any other Act or legislation may be cancelled at the discretion of the Regulator.

Annual Report.

**25.** (1) The Regulator shall, by not later than eight weeks

after the end of each calendar year, prepare and present to the Minister an annual report which shall include:

- (a) a report of the Regulator's office activities during the preceding year;
- (b) a general description of the circumstances of family businesses in Malta and any developments which may affect the sector;
- (c) any recommendation regarding legislation, regulations, policies or other matters affecting the family business sector; and
- (d) accounts and other financial records referred to in this Act.

(2) The Regulator shall cause to be kept proper accounts and other financial records in respect of the operations of his office, and shall cause to be prepared a statement of accounts in respect of each financial year. After the end of each financial year, and not later than the date on which the report in sub-article (1) is to be forwarded to the Minister, the Regulator shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the office of the Regulator.

**26.** (1) There shall be a Register of Family Businesses which shall be maintained by the Regulator and shall contain information and data relevant to the registration process as applicable, as found in the First and Second Schedule, supported by the documentation referred to in the Schedules.

Register of  
Family  
Businesses.

(2) Upon registration, the Regulator shall allocate a unique registration number to the family business which shall be preceded by the letters "FB" which registration number shall be known hereinafter as the "Family Business Label" and the family business label may be quoted by the registered family business on any published materials, letters, notices, advertisements and other documents issued by such business.

(3) A list of the names of the family businesses in the Register will be available upon written request. No other information or contents of the Register other than the name of the family business will be available for disclosure except to the competent authorities granting benefits as referred to in the Act.

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Data.  
Cap. 440.

**27.** The Regulator shall, for the purposes of this Act, compile and maintain the Register subject to the provisions of the Data Protection Act.

Application to  
register.

**28.** (1) For a family business to be registered as such, the documents listed in the First Schedule shall be submitted to the Regulator who shall determine, to his satisfaction, whether the application complies with the provisions of this Act.

(2) A business may apply for registration by submitting the prescribed application form in the First Schedule to the Regulator.

(3) A non-refundable administration fee shall be submitted with every application irrespective of the outcome of the application.

(4) In considering an application, the Regulator may request the applicant to provide further information about the business or make representations on any matter on which he may have reservations or concerns in relation to the application.

(5) The Regulator may accept or refuse any application for registration on the basis of any of the following:

(a) the non-observance or otherwise of all the formalities required by this Act and as may be prescribed;

(b) the legality or otherwise of the purpose and objectives of the business that is not in compliance of the law or ethics in relation to its business activities;

(c) the fulfilment or otherwise of obligations relating to the payment of social security contributions in accordance with the applicable laws;

(d) the business has not fulfilled its obligations relating to the payment of taxes due in accordance with the applicable law; or

(e) the business has not supplied the information required under these regulations or has incorrectly supplied them.

(6) Where the Regulator requires proof from the applicant that none of the cases quoted in sub-article (5)(c), (d) and (e) have been met, it shall accept, as sufficient evidence, relevant certification issued by the administrative body in the country of origin or the country whence that person comes showing that these requirements have been met.



**29.** Certificates of registration shall be deemed to be public documents and shall be surrendered to the Regulator on his simple demand in writing stating the reasons for such request.

Certificates.

**30.** The Regulator may request from the registered family business any information and any clarification, and may also carry out any verification required so as to ascertain to his satisfaction that such business is in compliance with the provisions of this Act or any rule, regulation or guideline made thereunder. The registered family business shall seek to comply with this request expediently and in default the Regulator may cancel the certificate of registration.

Powers of the Regulator.

**31.** (1) The Regulator may order the cancellation of the registration of a family business by the issue of a cancellation order, which shall come into effect immediately.

Cancellation of activities.

(2) A cancellation order may be issued, at the discretion of the Regulator, if the registered family business:

(a) is not compliant with the criteria, where applicable, in the First and Second Schedule or any other provisions, rules, regulations and guidelines in accordance with this Act; or

(b) has not functioned, operated, traded or carried on business for a period which exceeds twelve consecutive months without interruption or earlier as the Regulator deems fit; or

(c) has obtained registration on the basis of materially incorrect or incomplete information that would have otherwise resulted in a refusal had the correct or complete information been known to the Regulator; or

(d) is not seeking to uphold and maintain the objectives of this Act; or

(e) the certificate of registration has been used in an incorrect manner or a forgery thereof has been committed.

(3) Prior to ordering the cancellation of the registration of a family business by the issue of a cancellation order, the Regulator shall inform the business in writing of his intentions to issue a cancellation order. The Regulator shall grant the business a period of time to give reasons why the cancellation order should not be issued. Following this the Regulator may grant the business a period of time in which to regularise its position and conform to the provisions of this Act. If the business does not do so within this stipulated time period, which may be extended by the Regulator at his discretion, the Regulator shall order the cancellation of the registration of the family

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business in accordance with sub-article (1).

(4) The Regulator shall notify and publish, in the Gazette, any cancellation order which has become final and shall notify all competent authorities accordingly.

(5) The registration of a family business shall terminate *ipso jure* if the business is struck off, or ceases to operate, function, trade or carry on business under any form.

Effects of  
cancellation of  
registration.

**32.** (1) In the event of cancellation of registration of a family business, the family members shall forthwith surrender, to the Regulator, the certificate of registration of such business and any person failing to surrender such certificate within the time stated as notified by the Regulator, shall be liable to an administrative fine of two hundred and fifty euro (€250).

(2) In the event of cancellation of registration of a family business, all benefits granted to such business by virtue of registration, shall cease to have effect from the date when the decision to cancel takes effect.

(3) Cancellation for the reasons mentioned in article 31(2) shall require the business to refund any benefits received by the business or any other individual by virtue of its registration in terms of this Act unless provided otherwise in this Act, and the Regulator may issue the relative orders against the business and any persons involved in such business:

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Provided that when the demand for the refund of any benefits is made by the Regulator by judicial letter issued in accordance with article 466 of the Code of Organization and Civil Procedure, this shall constitute an executive title against the business or any named family member of administrator in favour of the Regulator, in his own or as trustee for the person entitled to the refund as aforesaid.

(4) An order of the Regulator against a family business or any named family member shall be enforceable as an executive title once any judgment has become *res judicata* or no proceedings have been filed within the relevant time limits.

**Part IV**  
Offences

**33.** (1) Any person or business who in order to obtain and maintain the status of a family business -

Forgery or alteration of certificates or misrepresentation or abusive use of status.

(a) in any manner, forges or alters a certificate of registration so as to give the impression that he acts on behalf of a registered family business shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code;

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(b) who falsely misrepresents the registered family business or makes false representations shall be guilty of an offence under this Act;

(c) who, in any manner, makes an abusive use of a certificate of registration or the Family Business Label shall be guilty of an offence under this Act;

(d) who without reasonable excuse prepares any incorrect statement or gives any incorrect information in relation to any matter falling under this Act, shall be guilty of an offence under this Act.

(2) Any persons or business who is found guilty of any offence under sub-article (1) shall be liable on conviction to a term of imprisonment from thirteen months to four years.

(3) Upon any person or business admitting to or being found guilty of any of the above offences, the Regulator shall on conviction revoke any Certificate of Registration issued to the family business.

(4) The Regulator shall issue public statements on the facts to warn the public about any abuse by any person or business.

**34.** (1) Any person or business who wilfully with intent to obtain any benefit under this Act or regulations made under this Act or to assist any other person to do so:

Abuse of benefits.

(a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under this Act, any matter which should be included therein; or

(b) makes any false statement or entry in any return or other document or statement prepared or submitted for the

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purposes of or under this Act; or

(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or

(d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(e) makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence, and shall for each such offence be liable on conviction to a fine (*multa*) of not less than two thousand euro (€2,000) and not exceeding twelve thousand euro (€12,000) or to imprisonment for any term not exceeding four years, or to both such fine and imprisonment.

(2) Upon any person admitting to or being found guilty of any of the above offences, the Court may, on conviction, revoke any certificate issued to the registered family business.

General penalty.

**35.** If any person or business contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no specific penalty is provided, he shall be guilty of an offence and shall for each offence be liable, on conviction, to a fine (*multa*) of not less than two hundred and fifty euro (€250) and not more than one thousand and five hundred euro (€1,500).

Provision with respect to offences.

**36.** The provisions of this Act establishing offences and penalties in respect thereof shall not affect the operation of any other law establishing offences and penalties in respect of the same acts or omissions and shall not affect the application of any higher penalty under any other law.

Prescription of proceedings for offences.

**37.** Proceedings for an offence under this Act may be commenced at any time within five years from the date of commission of the offence upon the complaint of the Regulator.

Consequential amendment of the Duty on Documents and Transfers Act. Cap. 364.

**38.** Immediately after article 41B of the Duty on Documents and Transfers Act, there shall be added the following new article:

"Benefits applicable to registered family business.

41C. (1) Notwithstanding any other provision of this Act, where a family business is transferred as a going concern by an individual to family members as defined in the Family Business Act and there is a transfer of immovable property being a commercial tenement as defined in article 1525 of the Civil Code (hereinafter referred to as "property"), that had been used in the said business for a period of at least three years preceding the transfer, in assessing the duty chargeable in terms of the said Act, duty shall be charged on the first five hundred thousand euro (€500,000) of the value of the property transferred as aforesaid at the rate of three euro and fifty cents per one hundred euro or part thereof, provided that the notary who receives any deed of such a transfer shall record in the deed a written declaration by the individual so transferring and the person so acquiring that the conditions laid out in this article are satisfied and the notary shall warn the said persons of the importance of the truthfulness of such declaration:

Provided that this sub-article shall also apply where the said individual transfers property that had been used in a family business carried out by the family members or business for a period of at least three years preceding the transfer:

Provided further that if such property or part thereof is either transferred *inter vivos* by the family members or family business, as the case may be, during the first three years from the date of acquisition, or ceases to be used in the business within the said period, the duty which would have been payable on the acquisition of the property or part thereof that is so transferred, but for the relief granted under this article, shall be levied at the time of the said transfer *inter vivos* or at the time the property ceases to be used by the business:

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Provided further that where such property or part thereof transferred *inter vivos* by the family member or family business, as the case may be, is replaced within one year by an immovable property used solely for a similar purpose in the family business (hereinafter referred to as the "replacement property"), in assessing the duty chargeable in respect of the replacement property, duty chargeable and paid in accordance with the previous proviso shall be allowed as a deduction.

(2) For the purposes of paragraphs (a), (b) and (c) of article 42(1), in assessing the duty chargeable, when an individual transfers shares or interests in a partnership, trust or foundation to family members referred to in sub-article (1) and such shares or interests in a partnership, trust or foundation are held in a family business which carries on a business, no account shall be taken of the first one hundred and fifty thousand euro (€150,000) or such other greater amount as may be prescribed of the value of the shares, or interests in a partnership, trust or foundation transferred as aforesaid:

Provided that this sub-article shall only apply where:

(a) the said family business does not own, directly or indirectly, any immovable property other than property referred to in sub-article (1) used in the said business for a period of at least three years preceding the transfer;

(b) the said family business is controlled and beneficially owned, directly or indirectly, to the extent of more than eighty-five per cent by the said individuals or family members.

(3) For the purpose of this article "business" shall mean a family business registered with the Regulator in terms of the Family Business Act and shall duly present an updated certificate in accordance with the law.

(4) This article shall only apply where the Commissioner issues a certificate attesting that he is satisfied that the conditions laid out in this article are fulfilled.

(5) Where, in accordance with the second proviso to sub-article (1), the property or part thereof is either transferred *inter vivos* by the family members or family businesses, or ceases to be used in the business, the duty chargeable under the said proviso shall be due by the family members or business, as the case may be, and shall be remitted to the Commissioner within fifteen working days from the date on which the property is either transferred as aforesaid, or ceases to be used in the business."

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**First Schedule**  
(Article 28)

Application Form for registration as a Family Business

1. Purpose.

The purpose of this application form is to provide the Regulator the necessary information in accordance with the provisions of this Act to allow him to assess the business as to its qualification as a registered family business.

2. Content and form.

The content and form of the application form, with all the required documents and Appendices as attachments as the case may require, that each family business shall duly file with the Regulator along with the Appendices, is as follows:

Application Form for Registration as a Family Business

- Application Form of ..... (*insert official name*)
- Trade name of business:
- Registered Address/Postcode:
- Any other address (apart from the registered address) where the applicant business carries out business:

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- Mobile/Landline/Telephone/Fax number(s):
- E-mail address/es:
- Website:

Where applicable:

- Registration Number:
- VAT number/s:
- Stock Exchange Listing Number:
- Trading Licence Number:
- Name/s of shareholders in the business and the number of shares held:
  - Name/s of family members involved in the governance of the business with certified copy of documentary evidence:
  - The written consent of the relevant family members to hold office after registration;
  - A resolution signed by the family members of the business indicating that they resolve to register the business with the Regulator;
  - Compliance Certificate from the VAT Department and Income Tax Department;
  - For businesses applying under article 3(5) the relative requirements of the Second Schedule, Sub-Title V of the Civil Code;
  - Organisation Chart to be certified by an accountant or lawyer with an accompanying bank reference letter of the business which must include:
    - (a) the organisational structure of the business;
    - (b) the family relationship within this structure;
    - (c) the job designation of each family member;
    - (d) an indication of who is responsible for the day to day running of the business;
    - (e) an indication of who the ultimate owners of the



business are.

This section is to be completed by each family member.

- Name of Family Member in the business:
- Designation:
- Passport number/I.D. Card number:
- Address:
- Family relationship in relation to the founder of the business:
- Any other details/information or other document as may be required by this Act or as may be prescribed:

#### Declaration of Completeness and Correctness

We hereby confirm that the details provided, including the attached Appendices, are complete and truthful as to their contents.

- Signature of family members:
- Name of family members:
- Date:

#### Appendices

(Where applicable)

Appendix A - Certified copy of declaration of business assets and contributions confirmed on oath.

Appendix B - Certified copy of documentary evidence including names of family members holding decision-making powers in the business confirmed on oath.

Appendix C - Certified copies of passports /I.D. Cards of family members.

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Appendix D - Where the family business is owned by the trustee of a trust, an authenticated copy of the trust deed including the list of beneficiaries to be delivered by the registered trustee of the family trust.

Appendix E - Where the family business is held by a private foundation an authenticated copy of the deed of foundation including any addendum amending the original deed of foundation and the beneficiary statement to be delivered by the administrator.

Appendix F - The lease agreement of the business.

Appendix G - Declaration by the family members that they have been actively trading or in operation without interruption for a minimum period of three (3) consecutive calendar years.

Appendix H - Any other document (Please specify).

Administration Fee of €100

Signature of Receiving Officer: .....

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## **Second Schedule**

(Article 13)

Annual return

1. Purpose.

The purpose of this annual return is to provide the Regulator and any related competent authority with up to date information about the registered family business, benefiting from incentives by means of this Act.

2. Content and form.

The content and form of the annual return, with all the required documents and Appendices as attachments, that each family business shall duly file with the Regulator annually is as follows:

Contents and Form of Annual Return of a registered family business

(a) Annual Return of ..... (*insert official name*)

- (b) Name of Family Business:
- (c) Family Business Label:
- (d) Name of Contact Person:
- (e) Designation:
- (f) Incentive applied for with the competent authority:
- (g) Date of approval of benefit from the competent authority:
- (h) Any benefit applied for and refused (stating the reason where provided).

#### Declaration of Completeness and Correctness

We hereby confirm that the details provided, including the attached Appendices, are complete and truthful as to their contents.

Signature of family members:

Name of family members:

Date:

#### Appendices

(Where applicable)

Appendix A - Revised and updated copy of Schedule 1, indicating any amendments that have been made to any parts thereof, and in such case, a declaration signed by at least two family members.

Appendix B - Copy of letter of refusal for benefit requested.

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Passed by the House of Representatives at Sitting No. 420 of the  
19th July, 2016.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

